

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Notice of Inquiry)	
Service Quality Standards in PBR Filings)	D.T.E. 99-84
_____)	

MOTION FOR CLARIFICATION OF THE JOINT UTILITIES

Bay State Gas Company, Blackstone Gas Company, Boston Gas Company, Colonial Gas Company, Essex Gas Company, Fall River Gas Company, Fitchburg Gas and Electric Light Company, North Attleboro Gas Company and NSTAR Gas Company (collectively, the “LDCs”)¹ and Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, Fitchburg Gas and Electric Light Company and Western Massachusetts Electric Company (collectively, the “Electric Companies”) (together, the “Joint Utilities”) hereby petition the Department of Telecommunications and Energy (the “Department”) for clarification of its decision in Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84, issued June 29, 2001 (the “Order”). The Order addresses the establishment of service quality guidelines for electric companies and local gas distribution companies. The Joint Utilities seek clarification of the Department’s Order and related guidelines (the “Guidelines”) on issues relating to: (1) penalty offsets; and (2) customer-service guarantees.

¹ Although The Berkshire Gas Company has joined with the Joint Utilities throughout this proceeding, because of its pending rate case at the Department, the Company is not participating in this motion.

I. STANDARD OF REVIEW

The Department's standard of review for clarification of its decisions is well-settled. The Department has stated that "[c]larification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is so ambiguous as to leave doubt as to its meaning." Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). "Clarification does not involve reexamining the record for the purpose of substantively modifying a decision." Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

As demonstrated in this Motion, the Order and Guidelines are either silent on certain issues or contain ambiguities or inconsistencies that leave doubt as to their meaning. However, in the next several months, a number of companies will be required to make company-specific filings establishing service-quality programs consistent with the Department's Order and Guidelines. Since the issues raised herein have generic application to all gas and electric companies, clarification of these issues prior to the filing of company-specific programs will ensure consistency and enable a more expeditious review process. Accordingly, it is appropriate and necessary for the Department to provide clarification as described herein.

II. DISCUSSION

A. The Department Should Clarify Certain Aspects of its Penalty Offset System.

1. The Department Should Clarify That Utilities May Carry Over Offsets That Are Earned, But Not Used, in a Given Year.

The Joint Utilities seek clarification from the Department regarding the mechanics of its “penalty offset” system. The Department found that utilities must determine performance deadbands based on the standard-deviation around historical levels of performance.² Order at 27. According to the Department’s penalty formula, a utility is subject to penalties if its measured service-quality performance statistics fall below one standard deviation from its historical benchmark in a given year. In recognition of the probabilities that the standard-deviation approach will inappropriately penalize companies for random variations in performance, the Department’s penalty formula also allows utilities to offset penalties when reported data indicate superior performance. *Id.* at 28.³ However, the Department’s Order and Guidelines are silent as to whether and how offsets that are earned, but not used, in a given year can be applied against penalties incurred in a subsequent year. As discussed below, clarification of the Order is necessary to indicate that the symmetrical penalty-offset system established by the Department allows utilities to carry over penalty offsets for use in subsequent years. Clarifying the Department’s Order in this manner is necessary to ensure that the policy goals underlying the adoption of the symmetrical standard-deviation approach are achieved.

² For the gas company odor call response metric, the Department established absolute performance levels that do not involve a computation of the standard deviation around an historical average. Order at 39-40.

³ The Department’s Guidelines also state that “penalty offsets acquired on any performance measure may be used to offset revenue penalties.” Guidelines at § VII.A.

The Department noted that its penalty formula is intended to balance the need for an easily defined and understood system with the need for a system producing reliable results. Order at 28-29. In supporting the use of the standard-deviation approach to establish deadbands, the Department recognized the statistical probability that 16 to 18 percent of the time, companies would be penalized for reported deviations in service quality that are the result of random events, rather than an indication of an actual decline in service quality. Therefore, in order to mitigate the chances of a company being unfairly penalized for random variations in performance, the Department incorporated an “offset” feature to its penalty mechanism, whereby a utility that is subject to a penalty for data indicating deficient performance in one service-quality measure may apply reports of superior performance on other service-quality measures as an offset to the penalty, up to the monetary penalty level. *Id.* at 28; Guidelines at § VII.A.

By incorporating an offset feature into its penalty formula, the Department has recognized the shortcomings of the standard-deviation approach and the need to modify the penalty system to ensure that random variations in the data caused by factors outside the control of the utility will not result in the unfair levying of penalties. The fundamental shortcoming of the standard-deviation approach is that the standard deviation (as a statistical tool) is calculated on too few data points, so that the resulting deadband is not likely to reflect the true level of variation that may actually occur with respect to a given service-quality measure. Therefore, random events that are outside of the control of the utility will produce variations in the measured service-quality data that fall outside of the deadband (whether above or below).

Significantly, random events that may cause performance to fall below (or above) historical levels, like harsh weather conditions, are likely to affect performance in multiple service-quality categories in the same year. For example, adverse weather conditions produce significant increases in customer-service call volumes and at the same time may produce or prolong the duration of electric service outages, or may require the reassignment of field personnel so that routine service appointments cannot be met as scheduled. In such an event, a utility's year-end service-quality measurements may result in penalties in several categories. Without the ability to use offsets accrued in prior years (as a result of random variation that has increased performance indicators), there is no reasonable opportunity for the utility to offset the negative impact of random variation in service-quality data, which would undermine the Department's stated goals of establishing a symmetrical system to ameliorate the limitations of the standard-deviation approach.

The Order is silent as to whether unused offsets can be applied against penalties in subsequent years, but to achieve the stated intent of the offset, the Department should clarify the Order and Guidelines to confirm that offsets may be used as described above.⁴ Any other interpretation, i.e., limiting the application of offsets to a single year, would not provide for a reasonable remedy to address the statistical limitations of the penalty mechanism. Order at 28. Accordingly, the Department's Order should be clarified to

⁴ The need for a multi-year approach in a symmetrical system is also reflected in the service-quality program established for Massachusetts Electric Company ("MECo") in its settlement in D.T.E. 99-47. Massachusetts Electric Company, D.T.E. 99-47, at 31 (2000). The MECo settlement allows the company to bank rewards by category and apply those rewards against penalties that would otherwise be imposed for that category in later years. Id.

confirm that a utility may apply unused offsets accrued for superior performance in subsequent years.

2. The Department Should Allow the LDCs To Offset Penalties for Performance Measures With Superior Performance for Odor Call Response Time.

The Joint Utilities also seek clarification regarding whether the LDCs may use superior performance in responding to odor calls to offset data indicating inferior performance on other measures. The Order is silent on this issue and the penalty formula set forth in the Guidelines is ambiguous as to the way in which superior performance on this measure would be applied as an offset to penalties incurred on other measures. Since there is no rationale for excluding this performance measure from the overall symmetrical penalty system, especially since the reliability measure for electric companies is included (SAIDI/SAIFI), the Joint Utilities seek clarification of the penalty formula.

In its Order, the Department established a uniform benchmark for the Odor Call Response Time measure, rather than requiring companies to establish a benchmark based on historical performance data and the standard-deviation approach. Order at 39-40. The Department stated that this determination was necessary because public safety considerations make it essential for gas distribution companies to maintain a high performance standard for odor call response times. *Id.* at 39. Clarification is needed, however, that superior performance on this measure would be available to offset penalties that may be incurred on other measures. To accomplish this objective, the Joint Utilities propose that the Department clarify the Guidelines (Section VII.C) as indicated below:

“C. Penalty/Offset Formula for Class I and Class II Odor Calls

The revenue penalty/offset formula for the performance measure set forth in Section VI. B shall be:

Class I and II Odor Call Penalty/Offset = Penalty/Offset Factor*Maximum Penalty/Offset

Where:

Penalty/Offset Factor is derived from Table P/OF, below:

Table P/<u>OF</u>	
<u>Penalty/Offset</u> Factor	<u>Calculation</u>
±0.25	when PP-OR = ±1 percent
±0.50	when PP-OR = ±2 percent
±0.75	when PP-OR = ±3 percent
±1.00	when PP-OR = ±4 percent or more

Where:

PP = 95 percent Fixed Target Benchmark

OR = Observed percentage of Class I and Class II Odor Calls actually responded to within 60 minutes achieved in year_y, rounded to the nearest percentage point; and

Maximum Penalty/Offset = (PCL)*(AR*0.02)

Where:

PCL = Performance category liability for the Class I & II Odor Calls measure expressed as a percentage (derived from Section VII. D); and

AR = Annual Transmission and Distribution Revenues of a Company for the applicable year.”

Such clarification is necessary because a gas company’s response to odor calls is also affected by random events beyond the company’s control, and therefore, the reported

service-quality data will reflect a level of random variation no different from the variation that will be experienced in the data relating to other measures. In other words, the Department has established a uniform performance standard for this measure, but has not eliminated the potential for random variation to occur in the reported data. Moreover, the reliability measure for electric companies (SAIDI/SAIFI) is included in the symmetrical penalty system – the only difference being that the Department has not established a uniform performance standard in light of the company-specific factors that drive performance on this measure. Thus, there is no basis for excluding this particular measure from the symmetrical penalty system established by the Department, especially in light of the disparity that would be created between gas and electric companies on the reliability measure. Accordingly, the Department should clarify that superior odor call performance may be used by gas companies to offset penalties incurred on other measures.

B. The Department Should Clarify the Extent to Which Customer Rebates or Credits Will Be Incorporated Into its Penalty Formula.⁵

The Department's order is silent as to the manner in which rebates or credits issued as customer-service guarantees will be incorporated into the penalty mechanism to ensure that they will "be complementary to the revenue penalty provision authorized pursuant to G.L. c. 164, § 1E(c)". Order at 37. The Department has recognized that its authority to assess service-quality penalties stems from G.L. c. 164, § 1E (Service Quality Standards, D.T.E. 99-84, at 4 (August 17, 2000)), which caps the amount of

⁵ An additional issue not addressed in this motion is the Department's legal authority to impose customer service guarantees. The Joint Utilities, and each individual utility signatory hereto, reserve the right to raise this issue in future proceedings.

penalties that may be imposed by the Department at 2 percent of a company's annual transmission and distribution ("T&D") revenues. G.L. c. 164, § 1E. Therefore, the Department's directive to institute customer-service guarantees must be consistent with the provisions of G.L. c. 164, § 1E, in that the penalties paid as customer-service guarantees, plus any penalties associated with the performance measures cannot exceed the maximum penalty of 2 percent of a company's annual transmission and distribution revenues.

If the Order's customer-service provisions were to be interpreted to allow rebates and credits to exceed 2 percent of T&D revenues, it would double penalize utilities, a result contrary to Department's stated intent. Order at 37. Thus, the Department should clarify that any penalties paid out as customer-service guarantees will be incorporated into the penalty formula in the following manner: Wherever the penalty formula is " $(AR * 0.02)$ ", the formula would read " $((AR * 0.02) - \text{credits paid})$." In this way, any credits or rebates paid for service guarantees would be counted toward the 2 percent T&D revenue limit for penalties. This clarification to the mechanics of the penalty mechanism would implement the Department's stated objective of creating a customer service guarantee mechanism that would "complement" the service quality penalty mechanism in a manner more consistent with the requirements of G.L. c. 164, § 1E.

III. CONCLUSION

For the reasons stated above, the Joint Utilities respectfully request that the Department grant this Motion for Clarification and provide the requested clarification, as described herein.

Respectfully submitted,

THE JOINT UTILITIES

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